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**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**RHYTHMS LINKS, INC.**

**Petition for Arbitration Pursuant to  
Section 252(b) of the Telecommunications  
Act of 1996 to Establish an Amendment for  
Line Sharing to the Interconnection  
Agreement with Illinois Bell Telephone  
Company d/b/a Ameritech Illinois, and for an  
Expedited Arbitration Award on Certain  
Core Issues.**

**Docket No. 00 -**

**0313**

**CHIEF CLERK'S OFFICE**

**APR 26 4 55 PM '00**

**ILLINOIS  
COMMERCE COMMISSION**

**PETITION FOR ARBITRATION**

**Negotiation Request:  
135th Day Thereafter:  
160th Day Thereafter:  
9 Months Thereafter:**

**November 18, 2000  
April 2, 2000  
April 27, 2000  
August 18, 2000**

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**Dated: April 26, 2000**

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PETITION FOR ARBITRATION

Pursuant to Section 252(b) of the Telecommunications Act of 1996 ("1996 Act"), Rhythms Links, Inc. ("Rhythms") petitions the Illinois Commerce Commission ("Commission") for an expedited arbitration award on the unresolved line sharing issues between Rhythms and SBC Ameritech Illinois ("SBC Ameritech").<sup>1</sup> Rhythms initiated negotiations, but has been unable to negotiate a line sharing amendment with SBC Ameritech. Therefore, Rhythms requests that the Commission issue an expedited arbitration award on the core issues described below to ensure that line sharing is effectively available on June 6, 2000, consistent with the Federal Communications Commission's ("FCC") *Line Sharing Order*.<sup>2</sup>

<sup>1</sup>Simultaneous with Rhythms' Petition, Covad Communications Inc. is filing a separate, but substantively similar, petition for arbitration. Given the substantive similarities between the two petitions, both Rhythms and Covad are separately moving the Commission to consolidated these arbitrations.

<sup>2</sup>*Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 98-147, Fourth Report and Order, CC Docket No. 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

## **I. BACKGROUND**

Line sharing enables a competitive advanced services provider, such as Rhythms, to transmit DSL-based services over the same copper loops by which SBC Ameritech provides voice services to its customers. The tremendous consumer benefit of this arrangement cannot be overstated. Consumers can receive high-speed, high-capacity data and Internet access without waiting for SBC Ameritech to install a separate loop dedicated to data services. Moreover, line sharing allows consumers to retain their desired local service provider while enjoying the benefits of competitively provided data services, all over a single loop. Line sharing thus truly provides the type of technological convergence that Congress envisioned in the 1996 Act.

Indeed, incumbent local exchange carriers ("ILECs"), including SBC, have been providing their own retail DSL services solely via line sharing arrangements for more than a year, while refusing to make this functionality available to competitive local exchange carriers ("CLECs").<sup>3</sup> In this way, SBC has leveraged its local telephony monopoly into the nascent advanced services market, which the 1996 Act specifically intended to establish as a competitive market.<sup>4</sup>

Line sharing will allow CLECs, such as Rhythms, to broaden their current offerings of DSL services to Illinois consumers. Currently, Rhythms must attempt to obtain a separate loop from SBC Ameritech in order to provide DSL services. Rhythms and other competing DSL providers have had to turn away thousands of potential customers because Ameritech has claimed that no unbundled facilities were available to serve the customer or Ameritech has assessed special construction charges that were too high to be recovered from the customer. These problems should be mitigated when the CLECs are able to provide DSL services over the

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<sup>3</sup>See e.g., Pacific Bell Telephone Co., Tariff F.C.C. No. 128, Transmittal No. 1986 (June 15, 1998).

same loop over which the customer is receiving voice services. As a result, it is essential that line sharing be implemented in Illinois as expeditiously as possible.

**A. The FCC's Line Sharing Order.**

Recognizing the anticompetitive nature of the ILECs' practice, the FCC found that the inability of CLECs to access the high frequency portion of the local loop "materially diminishes the ability of competitive LECs to provide certain types of advanced services to residential and small business users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings."<sup>5</sup> Therefore, on December 9, 2000, the FCC, in its *Line Sharing Order*, determined that the high frequency portion of the local loop meets the 1996 Act's definition of a network element and ordered ILECs to provide to CLECs unbundled access to this network element according to Sections 251(d)(2) and (c)(3) of the Act.<sup>6</sup> Noting that "any delay in the provision of the high frequency portion of the loop will have a significant adverse impact on competition,"<sup>7</sup> the FCC ordered ILECs to make line sharing available within 180 days of the release of its order.<sup>8</sup> Thus, SBC Ameritech is obligated under the FCC's *Line Sharing Order* to provide requesting carriers with unbundled access to the high frequency portion of the loop by June 6, 2000. The FCC also encouraged the state commissions to issue interim arbitration awards pending final determinations at the conclusion of the arbitrations in order to avoid a delay in the provision of DSL services on line shared lines.

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<sup>4</sup>Section 706 of the 1996 Act grants the FCC authority to ensure the rapid deployment of advanced services to all consumers.

<sup>5</sup>*Line Sharing Order* at ¶ 5.

<sup>6</sup>*Id.* at 4-5.

<sup>7</sup>*Id.* at 161.

<sup>8</sup>*Id.* (further noting that there may be interim measures that will allow access even before 180 days.)

**B. Negotiations.**

On November 18, 1999, the same day that the FCC adopted its *Line Sharing Order*, Rhythms sent, by overnight mail, a letter, pursuant to Section 252 of the 1996 Act, to SBC Ameritech states.<sup>9</sup> On November 23, 1999, SBC Ameritech responded that it would like to have an opportunity to evaluate the Line Sharing Order before commencing negotiations on line sharing.<sup>10</sup> On December 2, 1999, SBC Ameritech responded that it was willing to engage in interconnection negotiations with Rhythms.<sup>11</sup> However, such negotiations did not occur until several weeks later.<sup>12</sup> On March 30, 2000, representatives from Rhythms and SBC met in San Francisco to discuss amendments to cover line sharing in their interconnection agreements for Illinois and the other states served by SBC. At the meeting, the parties discussed the line sharing contract amendment proposed by Rhythms,<sup>13</sup> as well as the line sharing language proposed by SBC. The parties engaged in further discussions by telephone, but SBC indicated that it was not willing to modify its position on any of the substantive issues discussed at the March 30 meeting.<sup>14</sup>

By delaying negotiations until three months after the *Line Sharing Order*, SBC Ameritech has jeopardized Rhythms' opportunity to access the high frequency portion of the loop on nondiscriminatory terms and conditions to provide its DSL services over a shared line by

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<sup>9</sup>Letter from Craig Brown, Rhythms, to Rick Bradley, SBC Communications, Inc. (dated Nov. 18, 1999). According to 47 U.S.C. § 252(c)(1), either party may file for arbitration between the 135<sup>th</sup> and 160<sup>th</sup> day from the date that the ILEC received the letter initiating negotiations. Therefore, Rhythms is entitled to file for arbitration between April 2, 2000 and April 27, 2000.

<sup>10</sup>Letter from Theodore A. Edwards, Ameritech Information Industry Services, to Craig Brown, Rhythms (dated Nov. 23, 1999).

<sup>11</sup>Letter from Sandra McDuff, Ameritech Information Industry Services, to Craig Brown, Rhythms (dated Dec. 2, 1999).

<sup>12</sup>See Letter from Craig Brown, Rhythms, to Don DeBruin, Ameritech Information Industry Services (dated Jan. 4, 2000).

<sup>13</sup>A copy of that interconnection agreement amendment is attached hereto as Attachment A and is incorporated herein by reference.

June 6, 2000. In effect, SBC Ameritech is attempting to constrain Rhythms to make the “Hobson’s Choice” between signing SBC Ameritech’s initial, un-negotiated amendment or attempting to engage in further substantive negotiations for a more reasonable line sharing amendment, which would extend beyond the June 6 deadline. Neither of these options is acceptable and SBC Ameritech should not be permitted to restrict Rhythms’ right to aggressively offer its DSL services to a greater number of Illinois consumers through line sharing. Because of SBC Ameritech’s delays, and unwillingness to engage in meaningful negotiations, Rhythms must now exercise its statutory right and petition the Illinois Commission to arbitrate the issues associated with line sharing so that Rhythms is able to access the high frequency portion of the loop to provide line shared DSL services to Illinois consumers by June 6, 2000. In order to meet the June 6 deadline, Rhythms petitions the Commission for an expedited arbitration, as described below.

**C. The Commission Should Conduct the Line Sharing Arbitration in Two Phases.**

Rhythms recognizes that the Commission may require the full statutory nine month arbitration period under Section 252(b)(4)<sup>15</sup> to resolve all the line sharing issues. Since the nine-month resolution window extends well beyond June 6, 2000, Rhythms requests that the Commission divide the arbitration into two separate phases, as recommended by the FCC.<sup>16</sup>

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<sup>14</sup>Letter from Craig Brown, Rhythms, to Kristin Ohlson, Pacific Telesis Group (dated April 7, 2000).

<sup>15</sup>“The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.” 47 U.S.C § 252(b)(4)(C).

<sup>16</sup>Section 252(b)(4) of the 1996 Act establishes the role of State commissions in arbitrations. Under this provision, State commission may only resolve those issues included in the arbitration petition and any response, may require the arbitrating parties to provide any necessary information, and resolve the arbitrated issues within nine months. The statute is silent, and thus leaves it to the State commission’s discretion, on how the State commission should examine and consider the issues.

There is nothing in the 1996 Act that restricts the Commission's discretion to divide the issues in an arbitration and address them separately. Moreover, Rhythms' proposal is consistent with the *Line Sharing Order's* recognition that, unless handled expeditiously, arbitrations could delay the availability of line sharing beyond June 6, 2000. In order to avoid any unnecessary delay, the FCC urges stated commissions to issue binding interim arbitration awards.

We strongly encourage states to issue binding interim arbitration awards that would require the incumbent to begin provisioning this unbundled network element on interim arbitration terms and conditions within 180 days of release of this order. As detailed throughout this order, we have provided specific guidance for the states regarding arbitration awards. We believe that this is consistent with our goal of federal-state cooperation in facilitating the widespread deployment of advanced services.<sup>17</sup>

Thus, Rhythms' petition for an expedited arbitration is consistent with the spirit of the *Line Sharing Order* and will facilitate the deployment of line sharing by June 6, 2000.

Therefore, this Commission can, and should, separate these issues into two phases in order to meet the June 6 deadline.

The Commission should use Phase I to address the core issues for implementing line sharing by June 6, 2000. While these issues are detailed in the attached issues matrix, they include: options for the ownership and location of the splitter; the appropriate collocation augmentation intervals, test access, and provisioning intervals; and recurring and nonrecurring rates for the necessary elements.<sup>18</sup> Since these issues are fundamental prerequisites to line sharing, Rhythms urges the Commission to arbitrate these issues on an expedited basis and issue

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<sup>17</sup>Line Sharing Order at ¶ 164.

<sup>18</sup>In addition, Rhythms proposes that the Commission include in Phase I the operational issue of provisioning intervals for the high frequency portion of the loop. As with the other Phase I issues, this issue is vital to the provisioning of line sharing by June 6. Provisioning intervals are included in Issue 5 of the attached issues matrix.

a Phase I arbitration award in time for Rhythms to provide DSL services over a shared line by June 6, 2000.<sup>19</sup>

To this end, Rhythms proposes that the Hearing Examiner immediately set a prehearing conference and establish the following schedule as to Phase I: Rhythms and SBC Ameritech file supporting testimony, cost studies, workpapers, and all other supporting documents by May 5th; hearings on May 10<sup>th</sup> and 11<sup>th</sup>; all parties file briefs on May 23<sup>rd</sup>; and issuance of a final Phase I order by May 31<sup>st</sup>. Rhythms believes that this schedule is necessary in order for the Commission to issue a final decision in time for Rhythms to be able to use line sharing by June 6, 2000.

Pursuant to this proposal, Rhythms has attached to this Petition and incorporates herein by reference:

- (i) Rhythms' proposed line sharing amendment (Attachment A);
- (ii) an issues matrix identifying the Phase I and Phase II issues for arbitration and the parties' positions on those issues (Attachment B);<sup>20</sup> and
- (iii) a discovery request to SBC Ameritech.

Rhythms provides these attachments in order to facilitate an expedited ruling on the Phase I issues.

Rhythms proposes that Phase II address the remaining line sharing issues that, while important to the long term and non-discriminatory provision of DSL services over a shared voice line, are not a prerequisite to initiating line sharing by June 6. These issues address the effect of SBC Ameritech's deployment of new technologies on Rhythm's ability to provide DSL services through line sharing, including the provision of line sharing over fiber fed digital loop carriers

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<sup>19</sup> While Rhythms prefers a permanent resolution of these issues, Rhythms recognizes that the Commission may find that in order to issue a Phase I award in time for the June 6 deadline, the award must be interim.

<sup>20</sup> The issues matrix attached to Rhythms' Petition is substantively identical to that attached to Covad's Petition.



("DLCs") and Operations Support Systems ("OSS") related issues. In addition, as part of its final arbitration award at the end of Phase II, Rhythms urges the Commission to adopt line sharing as a matter of state law as well. Relying on a specific state requirement for line sharing in addition to the federal requirement will mitigate previous ILEC attempts to side step their federal obligations in the individual states. By adopting line sharing as a matter of state law, this Commission will ensure that more Illinois consumers have access to a greater choice in DSL services with faster installation and more ease than ever before.<sup>21</sup>

While the attached issues matrix and amendment language incorporate these Phase II issues, Rhythms will provide supporting testimony consistent with the procedural schedule adopted for Phase II, which must allow for a final arbitration award by August 18, 2000, the end of the statutory nine-month period for resolving this arbitration.

## **II. ISSUES FOR ARBITRATION**

### **A. Phase I.**

The Phase I issues are actually quite straightforward. This is because, as noted above, SBC is already, and has been, line sharing at the retail level, for well over a year. Thus, SBC has already established the technical feasibility of having POTS analog voice service and highband width DSL service occupy the same physical facility. As a result, the simple task for the Commission in this Phase I is to create the necessary conditions for Rhythms to be able to do what SBC is doing.

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<sup>21</sup>This Commission clearly has the authority to require line sharing as a matter of state law under both Section 251 of the 1996 Act, which empowers state commission to "establish [] access and interconnection obligations" of ILECs, as well as the FCC's *UNE Remand Order*, which specifically interprets Section 251 as permitting state commission to require ILECs to unbundle additional elements. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238 at 11 (rel. Nov. 5, 1999)(*"UNE Remand Order"*); *see also id.* ¶ 153-155. Thus, the Illinois Commission can, and should order Ameritech, pursuant to 220 ILCS 5/13-505.6, to unbundle the high frequency portion of the loop as a matter of state law as well as federal law.

Phase I issues are fully captured in the attached interconnection agreement language and issues matrix. As a result, this Petition simply summarizes these issues and the attachments contain the detailed analysis of these issues.

**1. Network Architecture.**

The first general Phase I issue concerns the different network architectures available for line sharing. The architectures are addressed in Sections IV, V and VI of the proposed language and Issues 1-3 in the issues matrix. Section IV of the amendment introduces the network configurations of Home Run Copper (i.e., an all-copper loop) and fiber fed DLC. Sections V and VI provide detailed provisions on the network topology and necessary elements for line sharing in these two environments. While both of these configurations are addressed in the proposed language, Rhythms recommends that the Commission limit Phase I to the Home Run Copper architecture, which is the networking configuration most familiar to the Commission and the parties. In this configuration, the CLEC utilizes the high frequency portion of a copper loop from the customers' premises to the serving central office, and obtains its DSL signal via a copper handoff at that central office. According to the FCC's *Line Sharing Order*, SBC Ameritech must provide this portion of the loop as an unbundled network element.<sup>22</sup>

As identified in Issues 1 and 2 of the matrix, one of the primary network configuration issues in a Home Run Copper scenario is the placement and ownership of splitters. Splitters are the devices used to separate the analog POTS voice signal from the high-bandwidth DSL signal that is carried on the same physical loop facility. Splitters can be installed in a number of different locations, including the CLEC's collocation arrangement, in an intermediate frame or bay located in a common area accessible to both the CLEC and ILEC, and in a frame or bay

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<sup>22</sup>*Line Sharing Order* at ¶¶ 16-19.

located in an ILEC-controlled space inaccessible to the CLEC. It is also possible for either the CLEC or ILEC to own and maintain the splitter.

As the proposed interconnection agreement language<sup>23</sup> and issues matrix<sup>24</sup> reflect, Rhythms proposes a “menu” approach to splitter location and ownership. Depending on their business plans, CLECs may prefer different arrangements for splitter ownership and placement. For example, different CLECs may desire to obtain the use of an ILEC splitter on a port-by-port or dedicated splitter (“shelf”) basis. Likewise, other CLECs, such as Rhythms, may prefer to own the splitter and place it in its collocation line-up to ensure unfettered access and control over this element. As a result, only the menu approach allows each CLEC to make the choice that best serves its competitive needs.

The final network configuration issue concerns the appropriate interval for adding to, or augmenting, the facilities that connect to Rhythms’ collocation facilities. SBC Ameritech has required that CLECs contract with vendors to install these facilities, which are commonly called Tie Cables. These cables must then be entered into SBC Ameritech’s inventory in its OSS. These activities are straightforward, and can be accomplished within 30 days, which is the interval proposed by Rhythms in the attached interconnection agreement language.<sup>25</sup>

Finally, Phase I should encompass provisioning intervals for the high frequency portion of the loop. Rhythms urges the Commission to adopt a phased provisioning interval that starts at three business days and is eventually reduced to one business day over a period of months.<sup>26</sup>

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<sup>23</sup>This issue is addressed in Section V(2) of the proposed line sharing language.

<sup>24</sup>Splitter ownership and location is identified in issues 1 and 2 of the issues matrix.

<sup>25</sup>Section V(2) of the proposed line sharing language and Issue 3 of the issues matrix.

<sup>26</sup>Provisioning intervals are included in Section VIII(A)(1) and Issue 5 of the issues matrix.

## **2. Rates.**

The availability of line sharing is only effective in increasing the availability of advanced services to the extent that the recurring and nonrecurring rates for line sharing are nondiscriminatory. Indeed, obtaining line sharing at a nondiscriminatory price is as competitively necessary as obtaining line sharing functionality in the first instance.

As a UNE, the high frequency portion of a loop must be priced in accordance with the Act's cost-based pricing requirement.<sup>27</sup> According to the FCC, it is "reasonable to presume that the costs attributed by LECs in the interstate tariff filings to the high-frequency portion of the loop cover the incremental costs of providing xDSL on a loop already in use for voice services."<sup>28</sup> Thus, SBC's cost of the loop to provide DSL services is the best evidence of the cost actually incurred by the loop for addition of those services. SBC has publicly stated that use of the data channel of an existing loop does not create additional incremental cost burden to that loop.<sup>29</sup> In other words, SBC has assigned a loop cost of \$0.00 to the aggregate cost of providing retail DSL services. SBC's determinations in this regard present the best evidence that the addition of data services to existing copper voice loops does not create or cause additional incremental cost to the loop. Therefore, the rate for the high frequency portion of the loop should be set at \$0.00.<sup>30</sup> This result is necessary, proper, and in accordance with long-standing federal and state pricing precedent.<sup>31</sup>

### **B. Phase II.**

Phase II should address the effect of SBC Ameritech's deployment of new technologies on Rhythm's ability to provide DSL services through line sharing, including line sharing over

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<sup>27</sup> *Line Sharing Order* at ¶ 134; 47 U.S.C. § 252(d)(1).

<sup>28</sup> *Line Sharing Order* at ¶ 140.

<sup>29</sup> See e.g. *Pacific Bell Telephone Co.*, Tariff F.C.C. No. 128, Transmittal No. 1986 (June 15, 1998).

<sup>30</sup> The monthly cost of the high frequency portion of the loop is Issue 6 in the issues matrix.

fiber fed DLC and OSS related issues. line sharing over fiber fed DLC and OSS issues. Reserving the right to more fully explore these issues in subsequent testimony in Phase II, Rhythms provides a brief overview of these issues below.<sup>32</sup>

Line sharing in a Fiber-Fed DLC configuration utilizes copper facilities from the customer premises to the ILEC's Remote Terminal, and fiber facilities from the Remote Terminal to the serving central office or other appropriate handoff point. Different serving arrangements apply to this type of network configuration. Nevertheless, because SBC Ameritech will soon begin rolling out Project Pronto, which will expand the number of customers served using the Fiber-Fed DLC configuration, the arbitration decision and final interconnection agreement language must address both Home Run Copper and Fiber-Fed DLC configurations.

With regard to OSS, SBC has already solved the issues associated with the pre-ordering, ordering, provisioning and installation, and testing, repair and maintenance functions related to the use of a single facility for two services. As a result, the simple task for the Commission in this arbitration is to create the necessary conditions for Rhythms to be able to do what SBC itself is currently doing. These issues are addressed in Sections VII, VIII, and IX of the attached interconnection agreement language, and will be further supported through later testimony. The language in these Sections of the attachment address the fact that at the current time, Ameritech is not ready to accept and process CLEC line sharing orders on a fully mechanized flow-through basis. As a result, Rhythms will address manual and semi-mechanized OSS interfaces. However, SBC has already deployed OSS changes that allow it to utilize fully mechanized flow-through techniques for its own retail line-shared services. Under the 1996 Act, non-

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<sup>31</sup>Rhythms' proposed rate for the tie cable, splitter, and jumpers are described in Section X of the attached interconnection agreement language.

<sup>32</sup>These issues are also included in the proposed contract language and the issues matrix.

discrimination and parity requirements mandate that Ameritech make available to CLECs equally efficient OSS processes and intervals.

**III. Conclusion.**

For the foregoing reasons, Rhythms requests that the Illinois Commerce Commission:

- (1) direct the Hearing Examiner to set an expedited prehearing conference in this matter at which the proposed schedule for Phase I is adopted and a schedule for Phase II is also set;
- (2) commence an expedited arbitration such that a decision on Phase I issues is issued in time to commence line sharing by June 6;
- (3) resolve the Phase II issues by August 18; and
- (4) grant such other and further relief the Commission deems appropriate.

Dated April 26, 2000

Respectfully Submitted,

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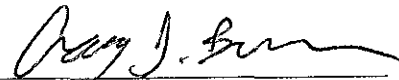
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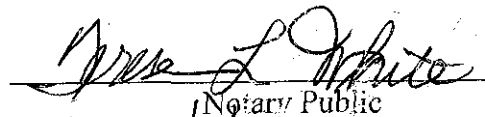
VERIFICATION

I, Craig J. Brown, being duly sworn, state on oath that I am Assistant General Counsel for Rhythms, and that the facts stated in the foregoing document are true and correct to the best of my knowledge, information and belief.



Craig J. Brown

Subscribed and sworn to before me this 25 day of April, 2000.

  
Notary Public

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### CERTIFICATE OF SERVICE

The undersigned attorney for Rhythms Links, Inc. hereby certifies that she caused copies of the attached Petition For Arbitration and discovery requests to be served on each of the persons listed below in the manner indicated:

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